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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,608	05/11/2006	Anthony David Harman	604-773	9825
23117	7590	01/04/2010	EXAMINER	
NIXON & VANDERHYE, PC			NIESZ, JASON KAROL	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/571,608	<b>Applicant(s)</b> HARMAN ET AL.
	<b>Examiner</b> JASON K. NIESZ	<b>Art Unit</b> 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 March 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 26 is/are allowed.
- 6) Claim(s) 1,2,7-11,16-25,27 and 28 is/are rejected.
- 7) Claim(s) 3-6 and 12-15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 08/14/2006 and 03/10/2006
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statements (IDS) submitted on 08/14/2006 and 03/10/2006 were considered by the examiner.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 10, 11 and 19 rejected under 35 U.S.C. 102(b) as being anticipated by Philip (WO 97/29029), (provided by applicant).

In Re claim 1 with reference to Figure 3 Philip discloses an apparatus for dispensing fluid comprising a source of fluid (5) and a dispensing device comprising an inlet (15a, 15b), and two outlets (18a and 18b), wherein the flow resistance of one outlet is higher than the other (Page 4, lines 2-8).

In Re claim 2 with reference to Figure 3 Philip discloses two outlets adjacent to each other (18a, 18b).

In Re claims 10 and 19 with reference to Figure 3 Philip discloses an apparatus for dispensing fluid comprising an inlet (15a, 15b), and two outlets (18a and 18b),

wherein the flow resistance of one outlet is higher than the other (Page 4, lines 2-8).

With reference to Figure 4 Philip discloses a connector (4) for manually securing the device to a fluid source (5).

In Re claim 11 with reference to Figure 3 Philip discloses two outlets adjacent to each other (18a, 18b).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 2, 7-11, 16-20, 22, 23, 25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osman et al. (6,572,873) (First published as WO 0072821 12/07/2007).

In Re claim 1 with reference to Figures 8 and 9 Osman discloses an apparatus for dispensing foam comprising a source of foam (24) and a dispensing device comprising an inlet (35) a usable foam outlet (outlet feeding into syringe 34) and a waste bleed outlet (pipe feeding into 38).

Osman doesn't disclose the waste bleed outlet having a higher resistance to flow than the usable foam outlet.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Osman device by constructing the waste bleed outlet to have a higher resistance to flow than the usable foam outlet, since one of ordinary

skill in the art would recognize the advantage of limiting the amount of foam lost to waste during the prefilling operation as well as causing the syringe to be filled in a timely manner.

In Re claim 2 with reference to Figure Osman discloses a waste bleed outlet (pipe feeding into 38) which is adjacent the usable foam outlet.

In re claims 7 and 8 with reference to Figure 8 Osman discloses a substantially enclosed transparent waste chamber (38) (Column 16, lines 15-47).

In Re claim 9 Osman discloses the claimed invention except for making the waste chamber an integral part of the dispensing device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make said waste chamber an integral part of the dispensing device, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1993).

In Re claim 10 with reference to Figures 8 and 9 Osman discloses an apparatus for dispensing foam comprising a source of foam (24) and a dispensing device comprising an inlet (35) a usable foam outlet (outlet feeding into syringe 34) and a waste bleed outlet (pipe feeding into 38). Osman further discloses a connector (30) for securing the dispensing device to a source of foam.

Osman doesn't disclose the waste bleed outlet having a higher resistance to flow than the usable foam outlet.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Osman device by constructing the waste bleed outlet to have a higher resistance to flow than the usable foam outlet, since one of ordinary skill in the art would recognize the advantage of limiting the amount of foam lost to waste during the prefilling operation as well as causing the syringe to be filled in a timely manner.

In Re claim 11 with reference to Figure Osman discloses a waste bleed outlet (pipe feeding into 38) which is adjacent the usable foam outlet.

In re claim 16 and 17 with reference to Figure 8 Osman discloses a substantially enclosed transparent waste chamber (38) (Column 16, lines 15-47).

In Re claim 18 Osman discloses the claimed invention except for making the waste chamber an integral part of the dispensing device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make said waste chamber an integral part of the dispensing device, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1993).

In Re claim 19 Osman inherently comprises a foam source with a connector complementary to that of the dispensing device and a foam outlet complementary to the foam inlet of the dispensing device.

In Re claim 20 with reference to Figure 8 Osman discloses a syringe (34).

7. In Re claims 22 and 23 with reference to Figure 8 Osman discloses a nozzle of a syringe (34) fitted to a usable foam outlet.

Osman doesn't disclose the nozzle of the syringe being fitted into the foam outlet.

Luer connectors were commonly known in the art at the time of the invention as a mechanism for connecting components of relatively low pressure fluid transfer systems. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Osman apparatus by using a female luer connector as the usable foam outlet, in order to provide a connection mechanism compatible with most available syringes.

In Re claim 25 Osman discloses a canister charged with liquid and gas under pressure (Column 15, lines 30-55).

In Re claim 27 a method step which is dependent on an apparatus claim is not patentable if the prior art apparatus is capable of performing the method claimed. The Osman apparatus applied to claim 1 is capable of performing the method of claim 27.

The Osman apparatus applied to claim 1 above necessarily performs the method of claim 28 during ordinary use and operation.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osman in view of Harman et al. (US PGPub 2004/0156915) (Published as WO 0241872 05/20/2002).

9. In Re claim 21 Osman as applied to claim 10 above discloses all the limitations, but doesn't disclose a dual canister foam source.

With reference to Figure 1 Harman discloses a foam generating apparatus comprising a first canister containing a liquid to be foamed (1) and a second canister containing pressurized gas (2) for charging the first canister.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Osman apparatus by using the Harman dual canister foam source, since the replacement of one known element with another equivalent element to achieve predictable results requires only ordinary skill in the art.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osman in view of Lee (US PGPub 2002/0107489).

In Re claim 24 Osman as applied to claim 10 above discloses all the limitations, but doesn't disclose a syringe having a plunger with a projection.

With respect to Figure 1 Lee discloses a syringe comprising a plunger (2) further comprising a projection (16) which extends into the nozzle of the syringe. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the Lee syringe as the syringe in the Osman apparatus, in order to minimize the dead space in the syringe and to ensure that all foam is dispensed.

***Allowable Subject Matter***

11. Claim 26 is allowed.
12. Claims 3-6 and 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz  
Examiner  
Art Unit 3751

/Timothy L Maust/  
Primary Examiner, Art Unit 3751